

COMPLIANCE BOARD OPINION NO. 99-13

August 26, 1999

Nathan H. Christopher, Jr., Esquire

The Open Meetings Compliance Board has considered your complaint that the Salisbury City Council violated the Open Meetings Act by conducting two closed meetings on June 14, 1999. For the reasons stated below, and based on the information available to it, the Compliance Board finds that the Act was not violated.

I

Complaint and Response

Your complaint identified two alleged violations, one occurring before the City Council's regularly scheduled open meeting and one after. According to your complaint, "witnesses saw the Mayor, all five members of the Council, the City Solicitor and the City Clerk carrying recording equipment come out of a small meeting room adjacent to the City Council chamber at approximately 7:10 p.m. The regular meeting was then opened but no mention was made of the initial closed meeting." This closed meeting violated the Act, your complaint alleged, because it occurred without advance public notice, without a recorded vote to close the session, without a written statement of the reason for closing, including the topics to be discussed; and without inclusion of information about the closed session in the minutes of the City Council's next open meeting.

The second alleged violation occurred after the June 14 open meeting at a nearby restaurant. There, four members of the City Council were observed "sitting at a table talking together for some period of time."

In a timely response on behalf of the City of Salisbury, Paul D. Wilbur, Esquire, denied that either gathering violated the Act. As to the session prior to the open meeting, Mr. Wilbur acknowledged that the City Council indeed held a closed session. This meeting did not violate the Act, however, according to Mr. Wilbur, because all of the Act's procedural requirements were satisfied. Specifically, notice was posted reasonably in advance of the meeting, on June 11; a recorded vote was taken and a majority of the Council voted to close the session to discuss a specific personnel matter; a written statement about the closed

session was prepared; and the minutes of the June 14 open meeting contained an account of the closed session earlier that evening.

As to the gathering in the restaurant, Mr. Wilbur reported that four members of the City Council “did sit together at a public place ... but did not discuss city business. [One member] cautioned the other members of the City Council that a quorum was present and no City business could be discussed.”

II

Analysis

A. Closed session procedures

From the material supplied by Mr. Wilbur, it appears to the Compliance Board that the City Council adhered to each procedural requirement in the Open Meetings Act for the holding of a closed session. Written notice of the anticipated closed session was posted, proper procedures were followed in closing the session, and an adequate summary was set out in the minutes of the next open meeting. The basis for closing the session was §10-508(a)(1) of the State Government Article, which allows closed discussion of specific personnel matters. The personnel matter had to do with the selection of a police chief to fill a current vacancy. This type of discussion is permissible in closed session.

The Compliance Board notes, however, that the procedures for closing a session must themselves be conducted in open session. Compliance Board Opinions 96-12 (November 20, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 191; 97-1 (January 14, 1997), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 201; and 97-4 (April 23, 1997), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 218. Therefore, had members of the public sought admission to the small conference room in which the Council was holding its closed session in order to observe the vote to close, they would have been entitled to do so.

B. Social gathering

With respect to the gathering in the restaurant, the issue is whether the four Council members – constituting a quorum of the Council – were holding a “meeting.” A gathering of a quorum is a “meeting” subject to the Act if the quorum is “convene[d] ... for the consideration or transaction of public business.” §10-502(g). Conversely, the presence of a quorum does not constitute a meeting if the event is merely a “social gathering or other

occasion that is not intended to circumvent [the Act]. §10-503(a)(2). As we said in a prior opinion, “A quorum of a public body may eat ... together in private, but they must refrain from conducting public business during that time.” Compliance Board Opinion 95-6 (October 18, 1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 127. *See also* Compliance Board Opinion 96-3 (April 9, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 157.

Mr. Wilbur asserted flatly that the four Council members seated together at the restaurant did not discuss public business, having been cautioned against doing so by one of those present. Based on this assertion, the Compliance Board concludes that, despite the presence of a quorum, the Council was not holding a “meeting” at the restaurant and, therefore, the Act was not violated.

OPEN MEETINGS COMPLIANCE BOARD

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